

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**FAO No.675 of 2003 (O&M)
Date of decision: 08.08.2017**

Deepak

....Appellant

Versus

Dinesh and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Ms. Kamaldeep Kaur, Advocate,
for Mr. Adarsh Jain, Advocate,
for the appellant.

Mr. Vinod Chaudhary, Advocate,
for respondent No.3-Insurance Company.

RITU BAHRI J. (Oral)

This appeal has been filed by the claimant-appellant (Deepak) seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Faridabad (hereinafter referred to as 'the Tribunal') vide award dated 03.10.2002, on account of injuries suffered by him in a motor vehicular accident which took place on 24.03.1997.

Brief facts of the case are that on 24.03.1997, Deepak-claimant (appellant) was playing in front of his house. In the meantime, a scooter bearing registration No. DL-3S-5770 being driven by Dinesh-respondent No.1 in a rash and negligent manner came and hit against the appellant, as a result of which, appellant received injuries on his head and other parts of the body. He also suffered fracture in his left leg. After the accident, respondent No.1-driver was apprehended by the people. The injured was shifted to the

accident, FIR No.484, under Sections 279/337/338 IPC was registered at Police Station, Central, Faridabad. Consequently, the claimant-appellant filed a claim petition before the Tribunal.

Upon notice, none had put in appearance on behalf of respondent No.2-owner, therefore, he was proceeded against exparte. However, respondent No.1 appeared and filed written statement, wherein all the allegations levelled by the claimant were controverted and prayer for dismissal of claim petition was made.

Respondent No.3-Insurance Company filed a separate written statement taking objections that the claimant has filed the present petition in collusion with respondent Nos. 1 and 2 in order to extract compensation amount from respondent No.3. The factum of accident had been denied. It was further stated that the insured had violated the terms and conditions of the insurance policy.

From the pleadings of the parties, following issues were framed:-

1. Whether the petitioner received injuries in the accident caused due to rash and negligent driving of respondent No.1, if so, to what effect? OPP
2. Whether the petitioner is entitled to compensation, if so, to what amount and from whom? OPP
3. Whether the insured of scooter No. DL-3S-5770 has violated the terms and conditions of the Insurance Policy, as alleged by respondent No.3. If so, to what effect? OPR
4. Whether the driver of scooter No. DL-3S-5770 was not duly licensed by holding an effective and valid driving licence. If

so, to what effect?? OPR

5. Whether the compensation, if awarded, is to be apportioned, as alleged by way of alternative plea taken by respondent No.3, if so, to what effect? OPR

6. Relief.

After going through the evidence led by the parties, the Tribunal came to a conclusion that the accident in question had been caused due to the rash and negligent driving of scooter bearing registration No. DL-3S-5770 by respondent No.1-driver, as a result of which, claimant-appellant has sustained injuries. Accordingly, issue No.1 was decided in favour of the claimant.

Before the Tribunal, claimant has examined Dr. S.K. Khurana as PW-1, who proved on record MLR of the injured as Ex.P1, x-ray report Ex.P2 and the discharge summary showing fracture on the left leg of the claimant as Ex.P3. Dr. V.K. Mundra (PW-7) has proved documents Ex.P-16 to Ex.P18. Dr. Rakesh Nagpal, Orthopaedic Surgeon appeared as PW-9 and deposed with regard to the treatment of Deepak, who was having fracture of left leg. He has proved prescription slips Ex.P27, Ex.P28 and bills Ex.P31 & Ex.P32. On the basis of this evidence, Tribunal has assessed the compensation as under:-

(i)	Actual medical expenses as per bills Ex.P4 to Ex.P9, Ex.P13, Ex.P14, Ex.P19 to Ex.P26 and also Ex.P31.	Rs.4000/-
(ii)	For pain and other sufferings on account of fracture in his left leg	Rs.5000/-
(iii)	Other Misc. expenses including attendant, special diet and conveyance charges etc.	Rs.5000/-
	Total	Rs.14,000/-

Feeling dissatisfied with the impugned award, the claimant-appellant has preferred the present appeal.

I have heard learned counsel for the parties and perused the case file.

The fact of accident is admitted and proved. As per medical record, claimant-appellant had received injuries on his person. His left leg had also been got fractured in this accident. He must have undergone a great deal of pain and sufferings. In these circumstances, the compensation is required to be enhanced under the head, 'special diet' and 'pain & sufferings'. Accordingly, in the peculiar facts and circumstances of the case, to meet the ends of justice, the compensation is hereby reassessed as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Actual medical expenses as per bills Ex.P4 to Ex.p9, Ex.P13, Ex.P14, Ex.P19 to Ex.P26 and Ex.P31.	Rs.4000/-
(ii)	Pain and other sufferings on account of fracture in the left leg of appellant	Rs.10,000/-
(iii)	Compensation towards misc. expenses, including special diet, transportation charges etc.	Rs.10,000/-
(iv)	TOTAL COMPENSATION AWARDED	Rs.24,000/-
(v)	Enhanced amount of compensation	Rs.24,000 – 14000 = Rs.10,000/-

The enhanced amount of compensation of **Rs.10,000/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of “*Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others*”, 2015(1) SCC 539. Remaining conditions of disbursal of

amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

(RITU BAHRI)
JUDGE

08.08.2017
ajp

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No